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**IN THE
COURT OF APPEALS OF INDIANA**

J.J.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-0605-JV-254
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-0511-JS-620

January 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

J.J., a minor, appeals the trial court's adjudication that he was a delinquent child for having violated Indiana's Compulsory School Attendance law.

We affirm and remand.

ISSUES

1. Whether sufficient evidence supports the adjudication.
2. Whether the trial court erroneously ordered payment of court and probation fees without inquiring as to the ability to pay those fees.

FACTS

Indiana's Compulsory School Attendance law requires provides that minors "shall attend . . . school"; further, school attendance officers must "report a child who is habitually absent from school" to the juvenile court. *See* Ind. Code § 20-33-2-5 and -25. J.J. attended I.P.S. School 514. On October 28, 2005, the attendance officer for School 514 executed an affidavit stating that sixth-grader J.J. "was absent school without excuse on 8-23-05, 9-1-05, 9-26-05, 10-7-05, 10-10-05, [and] 10-19-05." (App. 10). The officer also submitted records that she attested were the official attendance records from School 514 and which evidenced J.J.'s absences. On November 15, 2005, a petition was filed alleging that J.J. had committed the status offense of truancy for having knowingly violated Indiana's Compulsory Attendance Law by failing to attend school on those six days. On November 22, 2005, J.J., his mother, and the trial court entered into a 90-day truancy diversion contract. The order so providing stated that in the event J.J. failed to

successfully complete the diversion, “this case will be brought before the court for a hearing.” (App. 17).

On December 28, 2005, the juvenile division of the probation department filed a report stating that J.J. had violated the contract “due to continued absences from school.” (App. 18). On January 31 and February 3, 2006, the trial court held initial hearings to resume consideration of the petition alleging that J.J. had committed the status offense of truancy by failing to attend school on the previously specified six days between August 23rd and October 19, 2005. J.J., represented by counsel, denied the allegation.

At the evidentiary hearing on April 6, 2006, the official attendance record dated October 27, 2005 from School 514 – reflecting J.J.’s absences on August 23, September 1, September 26, October 7, October 10 and October 19, 2005 – was admitted into evidence. In addition, J.J.’s mother testified that she had moved in February of 2006, and that at that time J.J. began attending a different school. The trial court found that J.J. had committed the delinquent act of truancy and was “in need of care, treatment, rehabilitation or placement.” (App. 8). It ordered that J.J. be placed on probation, during which time he was to attend school and successfully complete the Teen Responsibility Awareness Program. In addition, the trial court ordered J.J. and/or his parent to pay certain court and probation fees. The probation order issued that same day specified that “every reasonable effort” be made to pay these fees. (App. 39).

DECISION

1. Sufficiency of the Evidence

When we review a claim of insufficient evidence regarding a juvenile delinquency adjudication, we neither reweigh the evidence nor judge witness credibility, and we only consider the evidence and reasonable inferences favorable to the judgment. *R.B. v. State*, 839 N.E.2d 1282, 1283 (Ind. Ct. App. 2005). We will affirm if there is substantial evidence of probative value to support the judgment. *Id.* A finding by the juvenile court adjudicating a child to be a delinquent for violation of the compulsory school attendance law must be based upon proof beyond a reasonable doubt. *Id.* (citing Ind. Code § 31-37-14-1).

Indiana juvenile statutes provide that a child “commits a delinquent act if, before becoming eighteen (18) years of age, the child violates” the Compulsory School Attendance statute. Truancy is one of certain acts specified by the juvenile statutes that would not be a crime if committed by an adult but are “status offenses” when committed by a minor. *R.B.* N.E.2d at 1284.¹ Delinquency adjudications for status offenses are governed by Indiana Code section 31-37-2-1, which provides:

A child is a delinquent child if, before becoming eighteen (18) years of age, the child:

- (1) commits a delinquent act as described in this chapter; and
- (2) needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving;
 - (B) the child is unlikely to accept voluntarily; and
 - (C) is unlikely to be provided or accepted without the coercive intervention of the court.

Id. Thus, the statute establishes a two-prong prerequisite. *Id.*

¹ Other status offenses include truancy, leaving home without permission, habitually disobeying the reasonable and lawful commands of the child’s parent, violating curfew, and violating laws concerning minors and alcoholic beverages. *Id.*

J.J. argues that there was insufficient evidence to support the true finding of truancy because “the State did not present even a scintilla of evidence that J.J. needed court intervention to ensure that he would attend school.” J.J.’s Br. at 3. We disagree.

J.J. does not challenge the finding that he violated the compulsory school attendance law. Nevertheless, we observe that the evidence was undisputed that he failed to attend school at all on the six days specified in the petition.

As to the statutory requirement that J.J. be found to require care, treatment or rehabilitation, like in *R.B.*, the trial court did not make an express finding in this regard. However, we have found that an affidavit listing unexcused absences was sufficient evidence to support a delinquency adjudication. *See G.N. v. State*, 833 N.E.2d 1071, 1075 (Ind. Ct. App. 2005). Moreover, in *R.B.*, we noted not only R.B.’s full-day unexcused absences but also the attendance record’s evidence of “other days on which he was unexcused for less than the full day.” Here, J.J.’s attendance record shows not only the six unexcused full days but also an additional twenty-two unexcused absences from individual class periods and numerous instances of his tardy attendance.

Moreover, in *R.B.*, we considered the Indiana legislature’s stated intent for statutorily compelling school attendance, to wit: “to provide an efficient and speedy means of insuring that students receive a proper education whenever it is reasonably possible.” *Id.* at 1285 (citing Ind. Code § 31-37-2-1). Therefore, we concluded,

where a child’s absence from school rises to the level of a delinquent act, it follows that the need to be in school on a regular basis is the very care, treatment or rehabilitation contemplated by Section 31-37-2-1.

Id. Because we found that a poor attendance record like R.B.’s “implicitly indicates that this need is not being met, is not going to be accepted voluntarily by the child, and is unlikely to be provided or accepted without the coercive intervention of the court,” we found that the State had presented sufficient evidence for the juvenile court to conclude that the second prong of the evidentiary prerequisite had been met. Here, we also find that J.J.’s six unexcused absences and multiple additional absences from individual classes provide sufficient evidence for the juvenile court to find that J.J. needs care, treatment, or rehabilitation that requires intervention of the court.

2. Fees Order

Next, J.J. claims the juvenile court “erred in ordering J.J. and his mother to pay [certain] fees without inquiring as to J.J.’s or his mother’s ability to pay.” J.J.’s Br. at 8, citing *M.Q.M. v. State*, 840 N.E.2d 441, 449 (Ind. Ct. App. 2006) and *A.E.B. v. State*, 756 N.E.2d 536, 544 (Ind. Ct. App. 2001). We acknowledge that both *M.Q.M.* and *A.E.B.* held that the trial court could not order payment of such fees without inquiring as to the ability to pay. However, we find that the structure and direction of the orders by the juvenile court in this case appear to contemplate such consideration.

The initial sentence of the juvenile court order places J.J. “on probation with special conditions.” (App. 8). Thereafter, it does direct that that J.J. “and/or parent” pay a \$130 docket fee, an initial \$35 probation fee, monthly probation supervisory fees of \$15, and a \$100 probation administrative fee. However, the probation order itself specifies that “every reasonable effort” be made to pay the foregoing fees. (App. 39). Therefore, J.J. could not be found to have violated probation for nonpayment of fees

unless there were an evidentiary hearing to consider whether “every reasonable effort” had been made to pay the fees. Nevertheless, we follow the holdings of *M.Q.M.* and *A.E.B.* find it prudent to order the juvenile court to hold a hearing and inquire as to the ability to pay before ordering such payments.

Affirmed and remanded.

NAJAM, J., and FRIEDLANDER, J., concur.